

**REMARKS/ARGUMENTS**

Favorable reconsideration of this application is respectfully requested.

Claims 1-78 are pending in this application. Claims 1-3, 6-8, 10-12, 15-17, 19-21, 24-26, 28-31, 34-36, 38-40, 42-51, 54-57, 60-74, 76, and 77 have been amended to emphasize that the “program” subject matter of the claims is that of computer software programs, not that of entertainment programs. See page 16, line 3 to page 17, line 2, for example. Clearly, the changes to the claims to emphasize the nature of the program limitations therein include no new matter.

The outstanding Official Action includes a rejection of Claims 1-41 under 35 U.S.C. §102(e) as being anticipated by Kobayashi et al. (U.S. Published Application No. 2004/0042363, Kobayashi), a rejection of Claims 42-53, 60-63, 68, 69, and 72-75 under 35 U.S.C. §102(b) as being anticipated by Kishi et al. (U.S. Publication Application No. 2001/0053224, Kishi), and a rejection of Claims 54-59, 64-67, 70, 71, and 76-78 under 35 U.S.C. §102(b) as being anticipated by Kawaura et al. (U.S. Published Application No. 2004/0042363, Kawaura).

The rejection of Claims 1-41 under 35 U.S.C. §102(e) as being anticipated by Kobayashi is traversed.

Kobayashi discloses that authentication information is written on an optical disc when writing data on the optical disc. This authentication data specifies a recording/reproducing device permitted to read the record data on the disc.

The outstanding Office Action first incorrectly asserts that the teachings of Kobayashi as to “a method of recording data, recording medium and recording device” are relevant to the inventive subject matter of Claims 1-41. While the Kobayashi taught recording medium is at least arguably relevant to the recording medium of rejected Claims 40 and 41, the teachings of Kobayashi as to “a method of recording data ... and recording device” are not at

all relevant. Note that exemplary Claim 1 subject matter requires that a record medium be detected to be in an “accessible state,” prior to performing activating the “accessible state” to perform an authentication check on the activated recording medium so that a **computer software program** can be **read** from said recording medium when a result of the authentication check is normal, which permits the execution of the **computer software program** being **read**. Similar subject matter appears in independent Claims 1, 10, 19, 29 and 39, where none of these claims recite any “recording method” steps for recording data or any components of a “recording device. To enable easy review of the pertinent limitations of exemplary Claim 1, they are repeated as follows:

a detector that detects a recording medium to be positioned to be set in an accessible state;

a recording-medium starting section that activates the recording medium detected by said detector to activate the accessible state; and

a computer software program starting section that performs an authentication check on said recording medium activated by the recording-medium starting section, reads a computer software program from said recording medium only when a result of the authentication check is normal, and starts an execution of said computer software program.

Turning to this actual exemplary Claim 1 subject matter, it is further not clear how the relied upon teachings of paragraph [0030] of Kobayashi are being interpreted to teach the “detector that detects a recording medium to be positioned to be set in an accessible state.” In this regard, paragraph [0030] is repeated as follows:

[0030] The recording/reproducing device 1 shown in FIG. 1 is a USB (Universal Serial Bus) connection-type external CD-R drive connectable to a personal computer PC or the like. The device 1 is capable of recording and reading various kinds of digital data on and from an optical disk OD. It should be noted here that various USB connection-type devices, including recording/reproducing devices 1, have respective USB serial numbers different from each other and specifically assigned thereto. On the other hand, the optical disk OD corresponds to a recording medium in the invention, and a general-purpose CD-R (unrewritable writable disk) available on the market is used as the optical disk OD by way of example. Incidentally, in the CD family including the CD-R, there are unwritable disks, such as a CD-DA for music and a CD-ROM having various data recorded thereon, and rewritable writable

disks such as a CD-RW. Further, as shown in FIG. 2, the optical disk OD on which various digital data are recorded has a data recording area 11 which is comprised of a management data recording area 11a defined at a radially innermost portion of the disk and a record data recording area 11b defined radially outward of the management data recording area 11a. In the management data recording area 11a, there are recorded FAT data concerning record data Dd, Dd, . . . recorded in the record data recording area 11b, management data Dx (e.g. "TOC (Table Of Contents)" or "UTOC (User Table Of Contents)") including position data concerning the recording position of data to be read out first when the optical disk OD is inserted into one of various recording devices including the recording/reproducing device 1, and so forth. Further, in the record data recording area 11b, there are recorded the record data Dd, Dd, . . . (data prepared or updated by a user using one of various application software programs, including audio data, video or image data, music data, or text data, or data prepared by one of the various application software programs and obtained by the user), authentication program data Dps, described hereinafter, and so forth.

These teachings at best suggest that when the management data Dx (e.g. "TOC (Table Of Contents)" or "UTOC (User Table Of Contents)") that includes "position data concerning the recording position of data to be read out first" will be reproduced, not that anything "detects a recording medium to be positioned to be set in an accessible state."

The outstanding Action then suggests that paragraph [0034] of Kobayashi teaches the exemplary Claim 1 "recording-medium starting section that activates the recording medium detected by said detector to activate the accessible state." However, paragraph [0034] of Kobayashi merely teaches the start of the recording process that initially cause the reading of the management data to determine the type of optical disc being recorded and a display of this information for operator selection of a recording mode. There is still no "detector" teaching and nothing is taught or suggested here as to how even this reading of management data is activated, much less something that can be reasonably called "the accessible state" is activated.

The outstanding Action next suggests that paragraph [0035] of Kobayashi teaches the recited "program starting section that performs an authentication check on said recording medium activated by the recording-medium starting section."

However, paragraph [0035] of Kobayashi does not teach or suggest such an authentication check of a recording medium. Instead the paragraph teaches that “when the data protecting mode is selected in the step 21, the control section 5 reads the authentication program data Dp from the EEPROM 6 and the serial number data Ds from the ROM 8, and then generates authentication program data Dps based on both the data, followed by storing the authentication program data Dps in the RAM 7 (step 24).” It is next taught by paragraph [0036] that this authentication program data Dps in the RAM 7 is then readout and recorded “at the rear of the recorded in the record data recording area 11b (i.e. a radially outermost portion of a session including the record data Dd) (step 26). Clearly, this taught processing for writing authentication information (authentication program data Dps) on an optical disc is not reasonably related to the claimed “authentication check on said recording medium activated by the recording-medium starting section.”

Additionally, the outstanding Action asserts that paragraphs [0030] and [0031] of Kobayashi teach reading a program from the medium and that paragraphs [0035] to [0037] teach this is done when a result of the authentication check is normal.

However, paragraph [0030] of Kobayashi is reproduced above and clearly only presents a general description of the recording/reproducing device 1, the general characteristics of the optical disc and the type of data recorded there on. Further, to whatever extent that “programs” of a software computer nature are suggested for use in preparing or updating data for recording, the only such computer software program actually recorded on the disc involves authentication computer software program data Dps. Paragraph [0031] further describes the recording/reproducing device 1 and functions performed by various sections thereof, but does not teach or suggest reading any computer software program apart from the authentication computer software program data Dps that is read.

In addition, paragraphs [0035] to [0037] of Kobayashi are not seen to reasonably teach or suggest such a start of execution of a computer software program which is read from the optical disc recording medium. Instead, these paragraphs of Kobayashi teach writing data on an optical disc that includes the authentication program data Dps, with no teaching or suggestion of any execution of another computer software program after reading that authentication program data Dps from a recording medium “when a result of the authentication check is normal.” Clearly, the execution of the authentication software program itself must always be performed and cannot be made dependent on the result of the authentication it performs.

Thus, the outstanding Office Action is mistaken in asserting that a start execution of a computer software type program is taught as to any of these paragraphs. In this regard, Kobayashi does not teach or suggest execution of a computer software type program that is read from a recording medium after it is found that the authentication check is “normal,” as noted above.

Other portions of Kobayashi teach that an authentication check is carried out using the authentication program data prior to reading data from an optical disc. See paragraphs [0039] and [0040], for example. However, what is read from the optical disc when this authentication program runs and indicates the check is “normal” is data and not another computer software program that is then executed. Accordingly, Kobayashi also does not teach or suggest the execution of a computer software program read from a recording medium after a normal authentication check.

Therefore, withdrawal of the rejection of Claims 1-41 under 35 U.S.C. §102(e) as being anticipated by Kobayashi is respectfully requested.

The rejection of Claims 42-53, 60-63, 68, 69, and 72-75 under 35 USC §102(b) as being anticipated by Kishi is also traversed.

The outstanding Action asserts that the subject matter of Claims 42-53, 60-63, 68, 69, and 72-75 is disclosed in paragraphs [0074] to [0075] of Kishi. This assertion is also not accurate. The outstanding Office Action indicates that paragraphs [0074] to [0075] of Kishi teach creation of license information and recording the created license information on a recording medium. However, these rejected claims do not recite such subject matter. Instead, these rejected claims recite recording license information and a computer software starting program on a recording medium, not just recording the license information. Kishi clearly does not teach or suggest recording such a computer software starting program on a recording medium. Instead, Kishi teaches recording license information with digital information 6 that is suggested in paragraph [0036] to be music data, for example. Even if it is improperly assumed, without any supporting evidence, that the digital information 6 recorded by Kishi contains some unknown type of software program, there is no indication or suggestion of recording a starting computer software program for starting an information processing apparatus as required by the subject matter of these rejected claims. Note, for example, Claim 42 reproduced as follows:

42. A recording-medium producing method of producing a recording medium that stores a computer software starting program which causes an information processing apparatus to start, the recording-medium producing method comprising:

producing license information using at least identification information of said recording medium; and

recording the license information produced by the producing step and the computer software starting program on said recording medium.

Accordingly, withdrawal of the rejection of Claims 42-53, 60-63, 68, 69, and 72-75 under 35 USC §102(b) as being anticipated by Kishi is respectfully requested.

The rejection of Claims 54-59, 64-67, 70, 71, 76-78 under 35 U.S.C. §102(b) as being anticipated by Kawaura is further traversed.

The outstanding action asserts that paragraphs [0094] to [0100] of Kawaura teach the subject matter of these claims. However, paragraphs [0094] to [0100] of Kawaura teach that the contents of a flash ROM 204 of an apparatus are updated according to information from a flash card 207 for updating. On the other hand, these rejected claims require recording a computer software program for update on an updating recording medium that stores a computer software starting program to start an information processing apparatus. Exemplary Claim 54 is reproduced as follows:

54. A recording-medium producing method of producing an updating recording medium for updating a computer software starting recording medium that stores a computer software starting program to start an information processing apparatus, the recording-medium producing method comprising:

producing an updating computer software program for updating the computer software starting program which causes said information processing apparatus to start; and

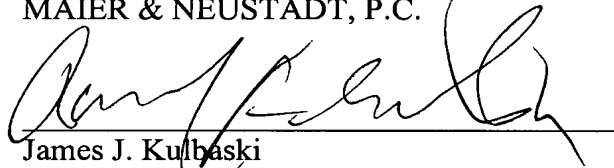
recording the updating computer software program produced by the producing step on said updating recording-medium.

Thus the subject matter of Claims 54-59, 64-67, 70, 71, 76-78 is not taught or suggested by Kawaura and the withdrawal of the rejection of Claims 54-59, 64-67, 70, 71, 76-78 under 35 U.S.C. §102(b) as being anticipated by Kawaura is also respectfully requested.

As no further issues are outstanding in the present application, it is believed to be clearly in condition for formal allowance. Accordingly, an early and favorable action to that affect is therefore earnestly and respectfully requested.

Respectfully submitted,

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A handwritten signature in black ink, appearing to read 'James J. Kulbaski', written over a horizontal line.

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